

SENATE BILL NO. 263—SENATORS CARE, TITUS AND AMODEI

MARCH 22, 2005

JOINT SPONSOR: ASSEMBLYWOMAN OHRENSCHALL

Referred to Committee on Natural Resources

SUMMARY—Adopts Uniform Environmental Covenants Act.
(BDR 40-359)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to environmental covenants; adopting the Uniform Environmental Covenants Act; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Title 40 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 24, inclusive, of this act.

4 **Sec. 2.** *This chapter may be cited as the Uniform*
5 *Environmental Covenants Act.*

6 **Sec. 3.** *As used in this chapter, unless the context otherwise*
7 *requires, the words and terms defined in sections 4 to 12,*
8 *inclusive, of this act have the meanings ascribed to them in those*
9 *sections.*

10 **Sec. 4.** *“Activity and use limitations” means restrictions or*
11 *obligations created under this chapter with respect to real*
12 *property.*

13 **Sec. 5.** *“Agency” means:*

14 1. *The State Environmental Commission;*



1 2. *The State Department of Conservation and Natural*
2 *Resources or the Division of Environmental Protection of that*
3 *Department; or*

4 3. *Any other state or federal agency that determines or*
5 *approves the environmental response project pursuant to which*
6 *the environmental covenant is created.*

7 **Sec. 6.** *“Common-interest community” means a*
8 *condominium, cooperative or other real property with respect to*
9 *which a person, by virtue of the person’s ownership of a parcel of*
10 *real property, is obligated to pay property taxes or insurance*
11 *premiums, or for maintenance or improvement of other real*
12 *property described in a recorded covenant that creates the*
13 *common-interest community.*

14 **Sec. 7.** *“Environmental covenant” means a servitude arising*
15 *under an environmental response project that imposes activity and*
16 *use limitations.*

17 **Sec. 8.** *“Environmental response project” means a plan or*
18 *work performed for environmental remediation of real property*
19 *and conducted:*

20 1. *Under a federal or state program governing environmental*
21 *remediation of real property;*

22 2. *Incident to closure of a solid or hazardous waste*
23 *management unit, if the closure is conducted with approval of an*
24 *agency; or*

25 3. *Under a state voluntary cleanup program authorized by the*
26 *laws of this State.*

27 **Sec. 9.** *“Holder” means the grantee of an environmental*
28 *covenant as specified in subsection 1 of section 13 of this act.*

29 **Sec. 10.** *“Person” means any natural person, corporation,*
30 *business trust, estate, trust, partnership, limited-liability company,*
31 *association, joint venture, public corporation, government,*
32 *governmental subdivision, agency or instrumentality, or any other*
33 *legal or commercial entity.*

34 **Sec. 11.** *“Record,” used as a noun, means information which*
35 *is inscribed on a tangible medium or which is stored in an*
36 *electronic or other medium and is retrievable in perceivable form.*

37 **Sec. 12.** *“State” means a state of the United States, the*
38 *District of Columbia, Puerto Rico, the United States Virgin*
39 *Islands, or any territory or insular possession subject to the*
40 *jurisdiction of the United States.*

41 **Sec. 13.** 1. *Any person, including a person who owns an*
42 *interest in the real property, the agency or a municipality or other*
43 *unit of local government, may be a holder. An environmental*
44 *covenant may identify more than one holder. The interest of a*
45 *holder is an interest in real property.*



1 2. A right of an agency under this chapter or under an
2 environmental covenant, other than a right as a holder, is not an
3 interest in real property.

4 3. An agency is bound by any obligation it assumes in an
5 environmental covenant, but an agency does not assume
6 obligations merely by signing an environmental covenant. Any
7 other person who signs an environmental covenant is bound by
8 the obligations the person assumes in the covenant, but signing
9 the covenant does not change obligations, rights or protections
10 granted or imposed under law other than this chapter except as
11 otherwise provided in the covenant.

12 4. The following rules apply to interests in real property in
13 existence at the time an environmental covenant is created or
14 amended:

15 (a) An interest that has priority under any other law is not
16 affected by an environmental covenant unless the person who
17 owns the interest subordinates that interest to the covenant.

18 (b) This chapter does not require a person who owns a prior
19 interest to subordinate that interest to an environmental covenant
20 or to agree to be bound by the covenant.

21 (c) A subordination agreement may be contained in an
22 environmental covenant covering real property or in a separate
23 record. If the environmental covenant covers commonly owned
24 property in a common-interest community, the record may be
25 signed by any person authorized by the executive board of the
26 unit-owners' association.

27 (d) An agreement by a person to subordinate a prior interest
28 to an environmental covenant affects the priority of that person's
29 interest, but does not by itself impose any affirmative obligation on
30 the person with respect to the environmental covenant.

31 **Sec. 14. 1. An environmental covenant must:**

32 (a) State that the instrument is an environmental covenant
33 executed pursuant to this chapter;

34 (b) Contain a legally sufficient description of the real property
35 subject to the covenant;

36 (c) Describe the activity and use limitations on the real
37 property;

38 (d) Identify every holder;

39 (e) Be signed by the agency, every holder and, unless waived
40 by the agency, every owner of the fee simple of the real property
41 subject to the covenant; and

42 (f) Identify the name and location of any administrative record
43 for the environmental response project reflected in the
44 environmental covenant.



1 2. *In addition to the information required by subsection 1, an*
2 *environmental covenant may contain other information,*
3 *restrictions and requirements agreed to by the persons who signed*
4 *it, including:*

5 (a) *Any requirements for notice following transfer of a*
6 *specified interest in, or concerning proposed changes in use of,*
7 *applications for building permits for, or proposals for any site*
8 *work affecting the contamination on, the property subject to the*
9 *covenant;*

10 (b) *Any requirements for periodic reporting describing*
11 *compliance with the covenant;*

12 (c) *Any rights of access to the property granted in connection*
13 *with implementation or enforcement of the covenant;*

14 (d) *A brief narrative description of the contamination and*
15 *remedy, including the contaminants of concern, pathways of*
16 *exposure, limits on exposure, and location and extent of the*
17 *contamination;*

18 (e) *Any limitation on amendment or termination of the*
19 *covenant in addition to those contained in sections 19 and 20 of*
20 *this act; and*

21 (f) *Any rights of the holder in addition to its right to enforce*
22 *the covenant pursuant to section 21 of this act.*

23 3. *In addition to other conditions for its approval of an*
24 *environmental covenant, the agency may require those persons*
25 *specified by the agency who have interests in the real property to*
26 *sign the covenant.*

27 **Sec. 15. 1. *An environmental covenant that complies with***
28 ***this chapter runs with the land.***

29 2. *An environmental covenant that is otherwise effective is*
30 *valid and enforceable even if:*

31 (a) *It is not appurtenant to an interest in real property;*

32 (b) *It can be or has been assigned to a person other than the*
33 *original holder;*

34 (c) *It is not of a character that has been recognized*
35 *traditionally at common law;*

36 (d) *It imposes a negative burden;*

37 (e) *It imposes an affirmative obligation on a person having an*
38 *interest in the real property or on the holder;*

39 (f) *The benefit or burden does not touch or concern real*
40 *property;*

41 (g) *There is no privity of estate or contract;*

42 (h) *The holder dies, ceases to exist, resigns or is replaced; or*

43 (i) *The owner of an interest subject to the environmental*
44 *covenant and the holder are the same person.*



1 3. *An instrument that creates restrictions or obligations with*
2 *respect to real property that would qualify as activity and use*
3 *limitations, except for the fact that the instrument was recorded*
4 *before October 1, 2005, is not invalid or unenforceable because of*
5 *any of the limitations on enforcement of interests described in*
6 *subsection 2 or because it was identified as an easement, servitude,*
7 *deed restriction or other interest. This chapter does not apply in*
8 *any other respect to such an instrument.*

9 4. *This chapter does not invalidate or render unenforceable*
10 *any interest, whether designated as an environmental covenant or*
11 *other interest, that is otherwise enforceable under the laws of this*
12 *State.*

13 **Sec. 16.** *This chapter does not authorize a use of real*
14 *property that is otherwise prohibited by zoning, by law other than*
15 *this chapter regulating use of real property or by a recorded*
16 *instrument that has priority over the environmental covenant. An*
17 *environmental covenant may prohibit or restrict uses of real*
18 *property which are authorized by zoning or by law other than this*
19 *chapter.*

20 **Sec. 17.** *1. A copy of an environmental covenant must be*
21 *provided by the persons and in the manner required by the agency*
22 *to:*

23 (i) *Each person who signed the covenant;*

24 (ii) *Each person holding a recorded interest in the real*
25 *property subject to the covenant;*

26 (iii) *Each person in possession of the real property subject to*
27 *the covenant;*

28 (iv) *Each municipality or other unit of local government in*
29 *which real property subject to the covenant is located; and*

30 (v) *Any other person the agency requires.*

31 2. *The validity of a covenant is not affected by failure to*
32 *provide a copy of the covenant as required under this section.*

33 **Sec. 18.** *1. An environmental covenant and any*
34 *amendment or termination of the covenant must be recorded in*
35 *every county in which any portion of the real property subject to*
36 *the covenant is located. For purposes of indexing, a holder must*
37 *be treated as a grantee.*

38 2. *Except as otherwise provided in subsection 3 of section 19*
39 *of this act, an environmental covenant is subject to the laws of this*
40 *State governing recording and priority of interests in real property.*

41 **Sec. 19.** *1. An environmental covenant is perpetual unless*
42 *it is:*

43 (a) *By its terms limited to a specific duration or terminated by*
44 *the occurrence of a specific event;*

45 (b) *Terminated by consent pursuant to section 20 of this act;*



1 (c) *Terminated pursuant to subsection 2;*

2 (d) *Terminated by foreclosure of an interest that has priority*
3 *over the environmental covenant; or*

4 (e) *Terminated or modified in an eminent domain proceeding,*
5 *but only if:*

6 (1) *The agency that signed the covenant is a party to the*
7 *proceeding;*

8 (2) *All persons identified in subsections 1 and 2 of section*
9 *20 of this act are given notice of the pendency of the proceeding;*
10 *and*

11 (3) *The court determines, after hearing, that the*
12 *termination or modification will not adversely affect human health*
13 *or the environment.*

14 2. *If the agency that signed an environmental covenant has*
15 *determined that the intended benefits of the covenant can no*
16 *longer be realized, a court, under the doctrine of changed*
17 *circumstances, in an action in which all persons identified in*
18 *subsection 1 and 2 of section 20 of this act have been given*
19 *notice, may terminate the covenant or reduce its burden on the*
20 *real property subject to the covenant. The agency's determination*
21 *or its failure to make a determination upon request is subject to*
22 *judicial review pursuant to NRS 233B.130.*

23 3. *Except as otherwise provided in subsections 1 and 2, an*
24 *environmental covenant may not be extinguished, limited or*
25 *impaired through issuance of a tax deed, foreclosure of a tax lien*
26 *or application of the doctrine of adverse possession, prescription,*
27 *abandonment, waiver, lack of enforcement or acquiescence, or a*
28 *similar doctrine.*

29 4. *An environmental covenant may not be extinguished,*
30 *limited or impaired by application of any laws of this State relating*
31 *to marketable title or dormant mineral interests.*

32 **Sec. 20.** 1. *An environmental covenant may be amended or*
33 *terminated by consent only if the amendment or termination is*
34 *signed by:*

35 (a) *The agency;*

36 (b) *Unless waived by the agency, the current owner of the fee*
37 *simple of the real property subject to the covenant;*

38 (c) *Each person who originally signed the covenant, unless the*
39 *person waived in a signed record the right to consent or a court*
40 *finds that the person no longer exists or cannot be located or*
41 *identified with the exercise of reasonable diligence; and*

42 (d) *Except as otherwise provided in paragraph (b) of*
43 *subsection 4, the holder.*

44 2. *If an interest in real property is subject to an*
45 *environmental covenant, the interest is not affected by an*



1 *amendment of the covenant unless the current owner of the*
2 *interest consents to the amendment or has waived in a signed*
3 *record the right to consent to amendments.*

4 3. *Except for an assignment undertaken pursuant to a*
5 *governmental reorganization, the assignment of an environmental*
6 *covenant to a new holder is an amendment.*

7 4. *Except as otherwise provided in an environmental*
8 *covenant:*

9 (a) *A holder may not assign its interest without the consent of*
10 *the other parties; and*

11 (b) *A holder may be removed and replaced by agreement of the*
12 *other parties specified in subsection 1.*

13 5. *A court of competent jurisdiction may fill a vacancy in the*
14 *position of holder.*

15 **Sec. 21.** 1. *A civil action for injunctive or other equitable*
16 *relief for the violation of an environmental covenant may be*
17 *maintained by:*

18 (a) *A party to the covenant;*

19 (b) *The agency or, if it is not the agency, the State Department*
20 *of Conservation and Natural Resources or the Division of*
21 *Environmental Protection of that Department;*

22 (c) *Any person to whom the covenant expressly grants power*
23 *to enforce;*

24 (d) *A person whose interest in the real property or whose*
25 *collateral or liability may be affected by the alleged violation of the*
26 *covenant; or*

27 (e) *A municipality or other unit of local government in which*
28 *the real property subject to the covenant is located.*

29 2. *This chapter does not limit the regulatory authority of the*
30 *agency, or the State Environmental Commission, the State*
31 *Department of Conservation and Natural Resources or the*
32 *Division of Environmental Protection of that Department, under*
33 *law other than this chapter with respect to an environmental*
34 *response project.*

35 3. *A person is not responsible for or subject to liability for*
36 *environmental remediation solely because it has the right to*
37 *enforce an environmental covenant.*

38 **Sec. 22.** 1. *The State Department of Conservation and*
39 *Natural Resources shall establish and maintain a registry that*
40 *contains all environmental covenants and any amendment or*
41 *termination of those covenants. The registry may also contain any*
42 *other information concerning environmental covenants and the*
43 *real property subject to the environmental covenants which the*
44 *Department considers appropriate. The registry is a public record.*



1 2. After an environmental covenant or an amendment or
2 termination of a covenant is filed in the registry pursuant to
3 subsection 1, a notice of the covenant, amendment or termination
4 that complies with this section may be recorded in the land records
5 in lieu of recording the entire covenant. Any such notice must
6 contain:

7 (a) A legally sufficient description and any available street
8 address of the real property subject to the covenant;

9 (b) The name and address of the owner of the fee simple
10 interest in the real property, the agency and the holder if other
11 than the agency;

12 (c) A statement that the covenant, amendment or termination
13 is available in a registry at the State Department of Conservation
14 and Natural Resources; and

15 (d) A statement that the notice is notification of an
16 environmental covenant executed pursuant to this chapter.

17 3. A statement in substantially the following form, executed
18 with the same formalities as a deed in this State, satisfies the
19 requirements of subsection 2:

20
21 1. This notice is filed in the land records of the [insert
22 name of political subdivision] of [insert name of jurisdiction
23 in which the real property is located] pursuant to section 22
24 of this act.

25 2. This notice and the covenant, amendment or
26 termination to which it refers may impose significant
27 obligations with respect to the property described below.

28 3. A legal description of the property is attached as
29 Exhibit A to this notice. The address of the property that is
30 subject to the environmental covenant is [insert address of
31 property] [not available].

32 4. The name and address of the owner of the fee simple
33 interest in the real property on the date of this notice is
34 [insert name of current owner of the property and the
35 current owner's address as shown on the tax records of the
36 jurisdiction in which the property is located].

37 5. The environmental covenant, amendment or
38 termination was signed by [insert name and address of the
39 agency].

40 6. The environmental covenant, amendment or
41 termination was filed in the registry on [insert date of
42 filing].

43 7. The full text of the covenant, amendment or
44 termination and any other information required by the
45 agency is on file and available for inspection and copying in



1 *the registry maintained for that purpose by the State*
2 *Department of Conservation and Natural Resources at*
3 *[insert address at which the registry is maintained]. [The*
4 *covenant, amendment or termination may be found*
5 *electronically at [insert Internet address for covenant].]*

6 **Sec. 23.** *In applying and construing this chapter,*
7 *consideration must be given to the need to promote uniformity of*
8 *the law with respect to its subject matter among states that enact it.*

9 **Sec. 24.** *This chapter modifies, limits or supersedes the*
10 *federal Electronic Signatures in Global and National Commerce*
11 *Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or*
12 *supersede Section 101 of that Act, 15 U.S.C. § 7001(a), or*
13 *authorize electronic delivery of any of the notices described in*
14 *Section 103 of that Act, 15 U.S.C. § 7003(b).*



